

## § 26.73

that result in the granting of unescorted access to protected areas, until five years following termination of such access authorizations;

(b) Retain records of confirmed positive test results which are concurred in by the Medical Review Officer, and the related personnel actions for a period of at least five years;

(c) Retain records of persons made ineligible for three years or longer for assignment to activities within the scope of this part under the provisions of § 26.27(b) (2), (3), (4) or (c), until the Commission terminates each license under which the records were created; and

(d) Collect and compile fitness-for-duty program performance data on a standard form and submit this data to the Commission within 60 days of the end of each 6-month reporting period (January-June and July-December). The data for each site (corporate and other support staff locations may be separately consolidated) must include: random testing rate; drugs tested for and cut-off levels, including results of tests using lower cut-off levels and tests for other drugs; workforce populations tested; numbers of tests and results by population, and type of test (i.e., pre-access, random, for-cause, etc.); substances identified; summary of management actions; and a list of events reported. The data must be analyzed and appropriate actions taken to correct program weaknesses. The data and analysis must be retained for three years. Any licensee choosing to temporarily suspend individuals under the provisions of § 26.24(d) must report test results by process stage (i.e., onsite screening, laboratory screening, confirmatory tests, and MRO determinations) and the number of temporary suspensions or other administrative actions taken against individuals based on onsite unconfirmed screening positives for marijuana (THC) and for cocaine.

[54 FR 24494, June 7, 1989, as amended at 57 FR 55444, Nov. 25, 1992]

## § 26.73 Reporting requirements.

(a) Each licensee subject to this part shall inform the Commission of significant fitness-for-duty events including:

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(1) Sale, use, or possession of illegal drugs within the protected area and,

(2) Any acts by any person licensed under 10 CFR part 55 to operate a power reactor or by any supervisory personnel assigned to perform duties within the scope of this part—

(i) Involving the sale, use, or possession of a controlled substance,

(ii) Resulting in confirmed positive tests on such persons,

(iii) Involving use of alcohol within the protected area, or

(iv) Resulting in a determination of unfitness for scheduled work due to the consumption of alcohol.

(b) Notifications must be made to the NRC Operations Center by telephone within 24 hours of the discovery of the event by the licensee.

(c) Fitness-for-duty events shall be reported under this section rather than reported under the provisions of § 73.71.

(d) By November 30, 1993 each licensee who is authorized to possess, use, or transport formula quantities of SSNM shall certify to the NRC that it has implemented a fitness-for-duty program that meets the requirements of 10 CFR part 26. The certification shall describe any licensee cut-off levels more stringent than those imposed by this part.

[54 FR 24494, June 7, 1989; 54 FR 47451, Nov. 14, 1989, as amended at 58 FR 31470, June 3, 1993]

## AUDITS

## § 26.80 Audits.

(a) Each licensee subject to this part shall audit the fitness-for-duty program nominally every 12 months. In addition, audits must be conducted, nominally every 12 months, of those portions of fitness-for-duty programs implemented by contractors and vendors. Licensees may accept audits of contractors and vendors conducted by other licensees and need not re-audit the same contractor or vendor for the same period of time. Each sharing utility shall maintain a copy of the audit report, to include findings, recommendations and corrective actions. Licensees retain responsibility for the effectiveness of contractor and vendor programs and the implementation of appropriate corrective action.

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(b) Audits must focus on the effectiveness of the program and be conducted by individuals qualified in the subject(s) being audited, and independent of both fitness-for-duty program management and personnel directly responsible for implementation of the fitness-for-duty program.

(c) The result of the audit, along with recommendations, if any, must be documented and reported to senior corporate and site management. The resolution of the audit findings and corrective actions must be documented. These documents must be retained for three years. NRC Guidelines require licensee audits of HHS-certified laboratories as described in appendix A.

### ENFORCEMENT

#### § 26.90 Violations.

(a) An injunction or other court order may be obtained to prohibit a violation of any provision of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974; or

(3) Any regulation or order issued under these Acts.

(b) A court order may be obtained for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act of 1954, for violations of—

(1) Section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act;

(2) Section 206 of the Energy Reorganization Act of 1974;

(3) Any rule, regulation, or order issued under these Sections;

(4) Any term, condition, or limitation of any license issued under these Sections; or

(5) Any provisions for which a license may be revoked under section 186 of the Atomic Energy Act of 1954.

[54 FR 24494, June 7, 1989, as amended at 57 FR 55072, Nov. 24, 1992]

#### § 26.91 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 26 are issued

under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 26 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 26.1, 26.2, 26.3, 26.4, 26.6, 26.8, 26.90, and 26.91.

[57 FR 55072, Nov. 24, 1992]

### APPENDIX A TO PART 26—GUIDELINES FOR DRUG AND ALCOHOL TESTING PROGRAMS

#### SUBPART A—GENERAL

- 1.1 Applicability
- 1.2 Definitions

#### SUBPART B—SCIENTIFIC AND TECHNICAL REQUIREMENTS

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#### SUBPART C—EMPLOYEE PROTECTION

- 3.1 Protection of Employee Records
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#### SUBPART D—CERTIFICATION OF LABORATORIES ENGAGED IN CHEMICAL TESTING

- 4.1 Use of DHHS-Certified Laboratories

#### SUBPART A—GENERAL

##### 1.1 Applicability

(1) These guidelines apply to licensees authorized to operate nuclear power reactors and licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

(2) Licensees may set more stringent cut-off levels than specified herein or test for substances other than specified herein and shall inform the Commission of such deviation within 60 days of implementing such change. Licensees may not deviate from the provisions of these guidelines without the written approval of the Commission.

(3) Only laboratories which are HHS-certified are authorized to perform urine drug testing for NRC licensees, vendors, and licensee contractors.

##### 1.2 Definitions

For the purposes of this part, the following definitions apply: